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Supreme Court, U.S.
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No. 97-1328

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

JAMES BARLOW FAMILY LIMITED PARTNERSHIP, ET AL.,

Petitioners,

v.

DAVID M. MUNSON, INC.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITIONERS' REPLY BRIEF

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I. Respondent Mischaracterizes the Tenth Circuit's Decision.

In an effort to diminish the significance of the Tenth Circuit's decision, respondent claims that the Court of Appeals merely declined to permit a settlement agreement between two parties to adversely affect the property rights of a third party. Brief in Opposition at 2. Respondent mischaracterizes the Tenth Circuit's decision.

First, the Tenth Circuit began its analysis "by reviewing and analyzing the settlement agreements to which Munson is alleged to be bound." Petition for Certiorari at 5a. After reciting the provisions of the agreements designed to preserve the federal leases, the Tenth Circuit called those provisions a "fiction" and said they were "simply not legally effective." Id. at 9a. The court reached this conclusion based on its interpretation of the "relation back doctrine"; it did not even mention the fact that Munson did not personally sign the agreements. Id. at 5a-9a.

Second, later in its opinion the Tenth Circuit acknowledged that "Munson might have been bound [by the Ertl settlement agreement] had Ertl acquired title to the oil and gas *which did not relate back* to the establishment of its mining claim . . . ." Id. at 14a (emphasis added). Thus, the Tenth Circuit's holding that Munson is not bound by the settling parties' efforts to preserve the federal leases is expressly tied to the court's earlier holding that the relation back doctrine invalidates the settlement. It is not based on Munson's purported status as a "third party."

Third, that Munson did not sign the settlement is irrelevant. Munson acquired his oil and gas lease from the Ertls with full knowledge of the pending oil shale litigation. Appellate App. I at 254. Accordingly, Munson

claims under the same title as the Ertls, stands in "privity" with them, and is bound by the outcome of the litigation St. Louis Baptist Temple v. F.D.I.C., 605 F.2d 1169, 1175 (10th Cir. 1979), see also Restatement (Second) of Judgments § 44. That outcome was the settlement signed by the Ertls.

Fourth, the settlement did not adversely affect Munson's "property" rights. Munson's property rights were as lessee of the oil and gas. He was a lessee before the settlement; he was a lessee after the settlement. All the settlement did was determine which set of leases – the private or the federal leases – was the valid set. Indeed, Munson acquired the two sets of leases to ensure that the outcome of the litigation would not adversely affect his status as lessee. Stipulated Facts, Appellate App. II at 380.

II. Respondent Misconstrues The "Relation Back" Doctrine And Its Application In This Case.

The Tenth Circuit's decision in this case is premised on its automatic application of the "relation back" doctrine, despite the express terms of the settlement agreement and the contrary intent of the settling parties. Respondent attempts to support this holding by asserting that the "mining claims involved in this case were perfected prior to 1920." Brief in Opposition at 7. Whether those claims were in fact perfected prior to 1920 (and properly maintained thereafter), however, was the very issue litigated for more than 20 years in the oil shale litigation. And it was the issue settled by the parties in the settlement agreement.

The settlement agreement resolved this issue by having the United States issue mineral patents to the oil shale claimants and having the oil shale claimants simultaneously reconvey the oil, gas, and coal to the

United States. See Settlement Agreement Clause 2.5, *reprinted in* District Court Order at 19a-20a n.2. As pointed out by the district court, the settlement agreement represented a compromise of the parties' positions. District Court Order at 20a. The issuance of the patents was made possible only by other provisions of the settlement agreement.

Respondent claims that issuance of the patents "served to confirm" the validity of the mining claims and the invalidity of the federal leases. Brief in Opposition at 4. Respondent thus wants to selectively rely on one component of this settlement while ignoring the other component. However, as the district court stated: "Munson cannot latch onto one part of the settlement – the issuance of patents – to deny the other part – the preservation of federal leases." Id at 23a. Because the validity of the oil shale mining claims was settled, and because that settlement is binding on Munson as a party in privity, the Tenth Circuit should not have applied the "relation back" doctrine in a manner that contravenes the compromise the parties struck.

Respondent also incorrectly describes the "relation back" doctrine as a legal doctrine embedded in the 1872 General Mining Law, as opposed to an equitable doctrine applied by courts where justice requires. Respondent fails to cite any section of the General Mining Law containing or referring in any way to this doctrine. That is because no such section exists. Instead, as this Court explained in United States v. Detroit Timber & Lumber Co., 200 U.S. 321 (1906), the "relation back" doctrine is a "fiction of law . . . resorted to whenever justice requires." Id. at 334-35. The Tenth Circuit's decision automatically applying relation back to invalidate key provisions of the oil shale settlement is inconsistent with Detroit Timber. See Petition at 13.

III. Conclusion

The Court should grant the petition for certiorari to address the important federal questions presented in the petition

Respectfully submitted,

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